



**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY**

WASHINGTON, D.C. 20460

OFFICE OF  
ENFORCEMENT AND  
COMPLIANCE ASSURANCE

Wendell Watson  
Director of Environmental Services  
Southern Illinois Power Cooperative  
11543 Lake of Egypt Rd.  
Marion, Illinois 62959  
wwatson@sipower.org

**SENT BY EMAIL ONLY**

**SUBJECT:** Notice of Potential Violation and Opportunity to Confer:  
Marion Station Coal Combustion Residual Unit Operated by the Southern  
Illinois Power Cooperative

Dear Mr. Watson:

The purpose of this letter is to raise to your attention potential compliance issues U.S. EPA staff have detected based on a review of the Marion Station's ("the facility") Notice of Intent to obtain an extension for the closure deadline under Section 257.103(a) of the Coal Combustion Residuals (CCR) Rule at 40 C.F.R. Part 257, Subpart D. As described more fully below, EPA is offering you the opportunity to confer about the issues contained in this letter and the opportunity to submit additional information that you think is relevant to these issues and should be considered.

Section 257.103 of the CCR Rule allows facilities that have units that are required to close to obtain an extension of the closure deadline and continue to receive CCR provided the requirements in that section are met. These requirements include preparing documentation that describes and supports the basis for needing the extension and placing such documentation in the facility operating record and posting it to the facilities' CCR web site.

The July 9, 2019, Notice of Intent and Certification to Comply with Alternative Closure Requirements was required in April 2019 and therefore was not prepared nor posted in accordance with the deadline in the CCR regulations. The Notice indicates that the Emery Pond CCR surface impoundment will be retrofitted to provide additional capacity for CCR disposal.

However, the Notice provides no specific information or documentation setting out the actual efforts the facility has undertaken, and continues to undertake, to develop the additional capacity as required by Section 257.103(a)(1)(ii). The statement that a retrofit plan was being developed at the time of the Notice is not sufficient. In addition, a notification of intent to retrofit and the retrofit plan have not been posted to the CCR web site as required by Sections 257.107(j) and 257.102(k). The lack of a retrofit plan indicates that the facility is not continually making an effort to obtain alternative capacity as required by Section 257.103(a)(1)(ii).

The retrofit plan must clearly demonstrate how the facility will pass all location restrictions as required by sections 257.60-64 with the new design for the surface impoundment. This includes a design that will meet the placement above the uppermost aquifer and seismic impact zone location restrictions, which the unit previously failed. All structural components of the retrofitted surface impoundment, including liners, leachate collection and removal systems, and surface water control systems, must be designed to resist the maximum horizontal acceleration in lithified earth material.

In addition, an annual progress report is required to be prepared and posted pursuant to Section 257.103(a)(1)(iv). As of October 6, 2020, an annual progress report was not posted on the facility's CCR web site.

These substantial deficiencies clearly raise serious questions regarding whether the facility qualifies for the alternative closure provisions. Therefore, in order to substantiate the need for these provisions and to demonstrate the qualification for them, facilities must prepare the initial notification to include all required relevant and accurate information and prepare and post a 2020 annual progress report providing the facts and information that demonstrate the continued need and qualification for the alternative provisions of Section 257.103(a). Facilities planning to retrofit a unit must prepare and post a retrofit plan, along with any other related notices, as required by the CCR regulations.

As you may know, on July 29, 2020, the Administrator signed a final rule revision of the CCR regulations. Among other things, the final rule establishes new alternative closure provisions at Sections 257.103(f)(1) and (f)(2). Surface impoundments currently operating under Sections 257.103(a) or (b) must either comply with the new regulations at Sections 257.103(f)(1) and (f)(2) or cease receipt of waste for those units as soon as technically feasible but not later than April 11, 2021. On August 28, 2020, the final rule was published in the *Federal Register* (85 FR 53516). The in-depth discussion of the changes to Section 257.103 begins on page 53537 of the publication.

Finally, the remedy selected, as described in the Remedy Selection Report, does not seem to meet all the requirements in Section 257.97(b). The Corrective Measures Assessment does not contain an accurate and complete assessment of potential remedial technologies according to the criteria required by Section 257.96, sufficient to support selection of a remedy as required in Section 257.97(a). The determination in the Remedy Selection Report that the formation in which groundwater monitoring has occurred does not meet the definition of an aquifer in Section 257.53 is not supported by documentation. This determination appears to conflict with the

January 2018 groundwater monitoring system certification and indicates potential noncompliance with groundwater monitoring requirements in Sections 257.90 through 257.95.

The Corrective Measures Assessment must accurately assess potential remedial measures according to the requirements in Section 257.96, which reference requirements in Section 257.97. The Remedy Selection Report must include a selection of a remedy supported by the Corrective Measures Assessment. The Corrective Measures Assessment must include all available data and analysis relied upon to make any determination that monitored detections have not occurred within an aquifer, as defined in Section 257.53. If it is determined that groundwater monitoring has not been conducted within an aquifer, an approach for compliance with the groundwater monitoring requirements in Sections 257.90 through 257.95 must be developed.

By this letter, the EPA is extending to you an opportunity to advise the Agency, via a conference call, or in writing, of any further information the EPA should consider with respect to the potential noncompliance. Please respond within 10 calendar days of this letter informing us whether you are interested in discussing this matter and providing the Agency with additional information to consider. If you are interested in preparing and revising the required documents, we ask that you do so within 30 calendar days of this letter, or let us know why you are unable to meet that timeframe and by what date you expect to do so.

Please email your response to the attention of Pete Raack in my office at [raack.pete@epa.gov](mailto:raack.pete@epa.gov). If you prefer, we can arrange a conference call to discuss these issues. If that is your preference, or if you have any questions, please email Pete Raack so we can schedule that discussion. Thank you for your attention to this matter.

Sincerely,  
Davies,  
Lynne

Digitally signed by Davies,  
Lynne  
Date: 2020.10.19  
13:59:20 -04'00'

Lynne Davies  
Acting Chief  
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cc: Bill Buscher, Illinois EPA  
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(SENT BY EMAIL ONLY)